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SPECIFIC GROUPS AND INDIVIDUALS

MIGRANT WORKERS

Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2001/52

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Executive summary

Pursuant to Commission on Human Rights resolution 2001/52, the Special Rapporteur on the human rights of migrants, Ms. Gabriela Rodriguez Pizarro, hereby submits her third report to the Commission at its fifty-eighth session. The report documents her activities and the communications she sent and received, during 2001. It also contains a discussion of the main trends in the protection of migrants' rights during 2001, including positive developments and situations of concern to the Special Rapporteur.

In its mandate to her, the Commission on Human Rights requested the Special Rapporteur to examine ways to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation.

In this report, the Special Rapporteur emphasizes the important developments that have taken place in the formulation of strategies to protect the rights of migrants, and in particular the achievements of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance as regards migration and human rights.

In the course of 2001, the Special Rapporteur was able to observe the extreme forms of abuse to which migrants are subjected by trafficking in human beings. In this report, she considers the consequences of trafficking for its victims and emphasizes her concern at the way the trafficking networks operate with impunity while, paradoxically, many States penalize their victims. She considers the challenge of managing migratory flows in an orderly manner, highlighting the need to combat the corruption that goes hand-in-hand with the trafficking, and to draft national legislation that truly does penalize illegal activity of this sort which exposes migrants to the worst forms of abuse. She recommends States to ratify the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Air and Sea.

The report emphasizes the situation of migrant women and unaccompanied minors in the trafficking and smuggling of human beings, and the experience of many young women who emigrate to more developed societies and settle down in the receiving countries because they do not encounter there the patterns of discrimination and repression by other members of their families that they suffered at home.

The Special Rapporteur also addresses the connection between asylum and migration, pointing out that the 1951 Convention relating to the Status of Refugees needs to be applied more effectively and that human rights must be properly protected as migration is controlled. She observes, furthermore, that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is about to enter into force, needing only three more ratifications to do so.

The report emphasizes the need to incorporate the protection of human rights fully into migration control policies. It is also necessary for States to honour their international commitments on human rights in a non-discriminatory manner, even during periods of emergency.

In chapter V, the Special Rapporteur gives details of the urgent appeals she sent to Bahrain, Indonesia, the Islamic Republic of Iran, Lebanon, Saudi Arabia, Spain, Tonga, Turkey and the United States of America, and her communications through the normal channels with Indonesia, Morocco and Spain.

Among the points covered in the Special Rapporteur's recommendations are that States should draw up national programmes of action pursuant to the agreements reached at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and that civil society should play an active role in the execution of those programmes.

The Special Rapporteur also recommends States to give priority to the orderly management of migratory flows where there is a real demand for immigration, while at the same time devising strategies to combat illegal migration and trafficking.

The Special Rapporteur urges States to incorporate the protection of migrants' rights into all their migration control policies, paying particular attention to the situation of illegal migrants in transit countries. Countries of origin should offer proper consular protection when their nationals are detained or their rights are infringed. All States should also remedy situations in which migrants are held in indefinite detention.

The Special Rapporteur warmly recommends States and organizations to give priority to the situation of migrant domestic workers, encouraging forums, meetings and gatherings where strategies to protect this particularly vulnerable group can be formulated.

The Special Rapporteur also recommends States to work together with civil society and migrant organizations, nationally, regionally and internationally, to coordinate their protection efforts.

Introduction

1. This report is submitted pursuant to Commission on Human Rights resolution 2001/52 of 24 April 2001. It is the third annual report that the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, has submitted to the Commission, and also the third such report to the Commission since the Economic and Social Council established the mandate on the human rights of migrants by decision 1999/239, in which it took note of Commission resolution 1999/44.

2. Chapter I is a general description of the new elements in the resolution on which the Special Rapporteur's mandate is based. Chapter II discusses the changes that have occurred in 2001 in the legal framework for that mandate. Chapter III offers a general survey of the migration situation as observed by the Special Rapporteur in 2001, and the situations which required her closer attention. Chapter IV provides detailed information on the main activities carried out by the Special Rapporteur pursuant to her mandate during the period under consideration, including emergencies in which she was required to take action. Chapter V summarizes her concluding observations and recommendations to Governments, civil society and migrants themselves. The report continues the discussion of topics taken up in the Special Rapporteur's previous report to the Commission, emphasizing the serious problem of smuggling of migrants and the attendant human rights violations, the situations faced by migrant women, and what the Special Rapporteur has learned about the conditions facing unaccompanied children. The Special Rapporteur is grateful for the comments and information she received in response to her second report to the Commission, and has sought to incorporate them or pass them on in this report.

3. Annexed to this report is an account of the Special Rapporteur's visit to Ecuador from 5 to 16 November 2001.

I. MANDATE

4. In its resolution 2001/52, the Commission on Human Rights encouraged the Special Rapporteur to continue to examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights of persons belonging to this large vulnerable group, including obstacles and difficulties for the return of migrants who are undocumented or in an irregular situation, in conformity with her mandate as contained in Commission resolution 1999/44.

5. During the period covered by this report, the Special Rapporteur has continued to develop her contacts with a variety of sources, including Governments, organizations and migrants, paying special attention to the gender perspective when seeking and analysing information as recommended by the Commission on Human Rights in its resolutions concerning the mandate. In fulfilment of her mandate, she has monitored national and regional negotiations concerned, in particular, with the return and reabsorption of migrants who are undocumented or in an irregular situation, as the Commission requested when her mandate was established.

6. Throughout 2001, the Special Rapporteur gave priority to the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Conference itself, as requested by the Commission in its resolutions concerning her mandate. Resolution 2001/52 reaffirmed the responsibility of Governments to safeguard and protect migrants against illegal or violent acts, in particular acts of racial discrimination and crimes perpetrated with racist or xenophobic motivation by individuals or groups, and urged them to take firmer action in that regard.

7. Lastly, in response to the Commission on Human Rights' request to her, the Special Rapporteur has continued to study the situation of migrants' rights so as to formulate appropriate recommendations to prevent and remedy violations of those rights wherever they may occur. To that end, the present report also advocates the effective application of the relevant international standards on the subject.

II. LEGAL FRAMEWORK

8. In this report, the Special Rapporteur, encouraged by the Commission on Human Rights in its resolution 2001/52 to continue to examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights of migrants, discusses the changes to the legal framework for her mandate that have occurred during 2001. The Special Rapporteur refers to her previous report to the Commission, at its fifty-seventh session (E/CN.4/2001/83), which contains an extensive discussion of the reference legal framework for her mandate.

9. First, the Special Rapporteur must single out the great contribution made by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to the protection of migrants' rights. The agreements reached during that Conference, published on 2 January 2002 (A/CONF.189/12) and due to be considered by the General Assembly, are important indicators of States' willingness to see to the full and effective protection of those rights as an addition to their existing international obligations. The Conference engendered numerous recommendations on steps to be taken by all States to ensure that migrants could live free of racial violence, discrimination and xenophobia.[1] The World Conference also recognized the important link between migration control and the need to protect the human rights of all migrants.[2]

10. Within the legal framework mapped out for her report to the Commission at its fifty-seventh session, the Special Rapporteur emphasized the importance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990. She commented in the report that the Convention was due to enter into force imminently, since the ratifications of Uruguay (15 February) and Belize (14 November) had been received in 2001 and only three more ratifications were needed for entry into force.

11. During her official visit to Ecuador, the Special Rapporteur was also informed that Ecuador's Congressional Committee on International Affairs and National Defence had endorsed the text of the Convention and ratification was imminent. That would make the 18th

of the 20 ratifications necessary for the Convention to enter into force. The Special Rapporteur takes this opportunity to recommend all States that have not yet done so to consider ratifying this important instrument.

12. The Special Rapporteur emphasizes the importance of the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Air and Sea. These three agreements are important references for the protection of migrants' rights, because they govern protection in the situations where the most extreme violations of migrants' rights occur. Their ratification would be an important step towards effectively preventing the traffic in and smuggling of human beings and avoiding penalizing the victims.

13. The Special Rapporteur regards as particularly important the clauses in those instruments calling on States to classify the trafficking in and smuggling of human beings as criminal offences, and to establish as aggravating circumstances any that, for example, endanger the lives or safety of migrants. She emphasizes the wording in the Protocol against the smuggling of migrants which states explicitly that "migrants shall not become liable to criminal prosecution" for having been the object of the offences covered by the Protocol, which is contrary to what she has come across in a variety of accounts since she took up her mandate.

14. The Protocols are international legal frameworks for efforts to combat and prevent trafficking and smuggling through international cooperation, and set out specific guidelines on the appropriate strategies and methods to follow. They also state the principles that must be respected when the victims of smuggling and trafficking are repatriated or returned, laying emphasis on the victims' dignity and safety. As this report was being completed, 140 States had signed the United Nations Convention against Transnational Organized Crime and 6 had become parties, 101 States had signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children but only 4 had ratified it, while 97 States had signed the Protocol against the Smuggling of Migrants by Land, Air and Sea, and 4 had ratified that.

15. The Special Rapporteur was extremely interested to receive, during 2001, the report of the Special Rapporteur on the rights of non-citizens, Mr David Weissbrodt, submitted to the Sub-Commission on the Promotion and Protection of Human Rights at its fifty-third session pursuant to Sub-Commission decision 2000/103 on the rights of non-citizens (E/CN.4/Sub.2/2001/20 and Add.1).

16. The Special Rapporteur on the rights of non-citizens examines, instrument by instrument, the rights that non-citizens have, international and regional case law, and the comments and recommendations made by the bodies established under the treaties concerned. The Special Rapporteur on the human rights of migrants regards this report as a worthy contribution to the systematizing of the protective legal framework for non-citizens in the international sphere. She considers it a successful compilation of the challenges involved in providing a clear definition of those rights in international law. The report mentions, for instance, the important work that the Committee on the Elimination of Racial Discrimination could continue to carry out, the better to articulate the rights of non-citizens in matters of non-discrimination.

17. A close reading of the report also reveals, in the Special Rapporteur's opinion, that the international system of protection is less robust where non-citizens in irregular situations are concerned. It is crucial to remember the general principles governing States' obligations towards migrants, which must be upheld irrespective of any classification of rights by individuals' migrant status. In particular, the Special Rapporteur would remind all concerned of the general principle of non-discrimination set forth in the Charter of the United Nations, the Universal Declaration of Human Rights and the main international human rights instruments to which the Special Rapporteur on the rights of non-citizens refers in his report. She draws attention to the agreement reached at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to request States to "promote and protect fully and effectively the human rights and fundamental freedoms of all migrants, in conformity with the Universal Declaration of Human Rights and their obligations under international human rights instruments, regardless of the migrants' immigration status.[3]

18. In keeping with the mandate given to her by the Commission on Human Rights, and in connection with the steps now being taken to confront terrorism on global scale, the Special Rapporteur emphasizes how important it is for States to honour the international commitments on human rights that they have made, especially as regards the non-derogable rights of every human being. In particular, it bears repeating that States parties to the International Covenant on Civil and Political Rights can, to the extent strictly required by the prevailing situation, suspend obligations they have assumed under the Covenant provided that such action is not incompatible with their other obligations under international law and does not result in any kind of discrimination on grounds of race, colour, sex, language, religion or social origins. The Special Rapporteur also emphasizes the significance of article 13 of the Covenant, which states that "an alien lawfully in the territory of a State party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority".

19. The Special Rapporteur echoes the call made by the Commission on Human Rights in resolution 2001/52, adopted at its fifty-seventh session on 24 April 2001, emphatically reaffirming the duty of States to ensure full respect and observance of the Vienna Convention on Consular Relations. In particular, she reaffirms the right of foreign nationals, regardless of their immigration status, to communicate with a consular official of their own State in the case of detention, and the obligation of the State in whose territory the detention occurs to inform the foreign national of that right.

20. Lastly, resolution 2001/52 urges all States to adopt effective measures to put an end to the arbitrary arrest and detention of migrants, including by individuals and groups, welcomes immigration programmes adopted by some countries that allow migrants to integrate fully into the host countries, facilitate family reunification and promote a harmonious and tolerant environment, and encourages States to consider the possibility of adopting such programmes.

21. In connection with the concern which she has felt throughout her mandate about the status of migrants' family members and the psychosocial effects of migration, the Special Rapporteur attaches importance to Commission resolution 2001/56 of 24 April 2001, "Protection of migrants and their families". She particularly values paragraph 2, which "encourages States of origin to promote and protect the human rights of those families of migrant workers which remain in the countries of origin, paying particular attention to children and adolescents whose parents have migrated, and encourages international and non-governmental organizations to consider supporting States in this regard". The Special Rapporteur feels that resolution 2001/56 captures the entire problem of how migration affects human rights, ranging from the situations of migrants in transit countries and of the children remaining in the country of origin to the conditions under which earnings are remitted.

22. Lastly, on the connection between asylum and migration addressed in chapter IV of this report, the Special Rapporteur draws attention to the need to apply the 1951 Convention on the Status of Refugees and the 1967 Protocol thereto more effectively, and ensure that human rights really are protected during efforts to control migration.

III. METHODS OF WORK

23. For a general description of the working methods associated with her mandate, the Special Rapporteur refers to the report she submitted to the Commission on Human Rights at its fifty-seventh session (E/CN.4/2001/83), which covers them in detail on the basis of the resolutions which created the mandate.

IV. GENERAL CONTEXT AND SITUATIONS REQUIRING THE SPECIAL RAPPORTEUR'S ATTENTION

A. Status of the question

24. In her report to the Commission on Human Rights at its fifty-seventh session, the Special Rapporteur identified five key groups of causes of the migratory flows currently observed around the world. She emphasized social and economic exclusion, the effects of widespread warfare, the demand for migrants in the receiving countries, the attraction that those countries exert, and natural disasters as the main factors leading people to emigrate. During the period covered by this report, the Special Rapporteur has observed how people emigrate and the circumstances in which the largest and most serious violations of human rights occur. Specifically, she has observed many cases of death, cruel, inhuman and degrading treatment and abuse, of men, women and children of both sexes from Asia, Africa, Latin America and eastern Europe, associated with the smuggling of migrants.

25. The Special Rapporteur repeats that States bear a shared responsibility for regulating migration and combating abuses and violations of migrants' rights. She has pointed out that such violations begin in the countries of origin, where future migrants cannot establish themselves, often face discrimination and are denied their basic rights. Parallel to this, in the receiving countries there is a demand for immigrant labour in a variety of productive sectors and

both commercial and private services to offset the effects of an aging population. But the flows of migrants are still poorly managed and regulated, and there has been an alarming increase in international networks smuggling migrants, exposing them to grave modern forms of human rights violation.

26. The Special Rapporteur also observes that victims of trafficking continue to be penalized despite the ordeals they undergo, while in the great majority of countries the criminal trafficking networks still operate with impunity. She also remarks that migrants are in a precarious situation in transit countries, where they face capture, detention and expulsion. She is concerned at the lack of protective mechanisms in those countries: countries of origin must negotiate with transit and receiving countries to guarantee respect for their citizens' rights.

27. At the eighty-second session of the Council of the International Organization for Migration (IOM), the Special Rapporteur identified the regulation of migratory flows and action to combat smuggling in migrants from the countries of origin as the main challenge for the coming century. She also remarked that it was increasingly incumbent on States to protect migrants' rights and tackle the question of protection as an integral part of migration control. She emphasized that the protection of migrants' rights cannot be viewed out of context, but should rather be regarded as an issue that cuts across and relates to all aspects of migration management and control over which States have sovereign authority. The focus on human rights should be an integral part of any migration-related procedure, including the deportation and return of undocumented individuals.

28. The Special Rapporteur is concerned at the situation of migrants in detention, waiting endlessly to be deported even after completing a penal sentence. Such cases occur in many countries when neither the migrant nor the State has the resources to finance the journey home, when the migrants lack travel documents and/or there is no consular office to send such documents to the countries where they are, and in particular when there is no bilateral arrangement governing deportation.

29. At the same time, the Special Rapporteur's attention has been captured by reports from Ecuadorian migrants' families claiming that their relatives have been put on trial and sentenced in transit countries under identities (names and nationalities) other than their own.

30. It is, the Special Rapporteur points out, especially important to encourage dialogue between countries of origin, transit countries and receiving countries so as to coordinate efforts to combat the smuggling of migrants and bring some order to the situation. Unilateral action to deal with migration is ineffectual: migration is a dynamic phenomenon involving many different parties and, in particular, civil society. Inviting civil society organizations to join in the dialogue now beginning regionally, bilaterally and nationally among States is sound practice, in the Special Rapporteur's view, given those organizations' knowledge of how migrants live and the assistance they provide daily to thousands of migrants around the world. She takes a positive view of regional processes in which civil society is treated as a partner and important matters such as protecting migrants' rights, preventing trafficking and gender and migration are discussed.

B. Matters requiring the Special Rapporteur's attention

Trafficking in migrants

31. In her report on her official visit to Ecuador (E/CN.4/2002/94/Add.1), the Special Rapporteur details how trafficking in persons comes about in Ecuador and its effects on its victims and migrants' families. Generally speaking, besides what she witnessed in Ecuador, the reports the Special Rapporteur received in 2001 reveal the extreme forms of abuse perpetrated by those engaged in the transnational organized crime of smuggling migrants all over the world. She is concerned about the situation of women caught up in trafficking, who are subjected to sexual abuse by members of the criminal gangs but also report instances of abuse by State employees when they are intercepted in transit countries. She is also alarmed at the use of illegal immigration channels by unaccompanied minors who purchase false identities or whose exit permits are handled by the trafficking networks, who also face abuse at the networks' hands.

32. The Special Rapporteur has received reports of offences associated with the smuggling of migrants, in particular accounts of the deaths of hundreds of migrants being smuggled by sea. In 2001, to mention just two cases, she was informed of the deaths of over 80 people in the Gulf of Aden and 356 people on an overcrowded boat that sank off the coast of Indonesia. She has also received reports of large numbers of migrants dying of suffocation while being smuggled by land or sea.

33. Migrants' families in various countries have also informed the Special Rapporteur that migrants appear to have vanished in transit countries. It is extremely difficult to ascertain the whereabouts of migrants using illegal migration channels, since they travel under assumed identities of which their families are unaware. According to reports received by the Special Rapporteur, migrants are often detained, tried and sentenced under names and nationalities other than their own, and this makes it difficult for their families to trace them. Other migrants are reported to have disappeared and died under similar circumstances as they tried to cross dangerous borders or were caught up in traffic accidents while being transported by the smugglers.

34. The Special Rapporteur is also concerned at the undue advantage taken of the families of migrants using the smuggling networks, especially the debt bondage to which they are subject in the country of origin. A lack of official means of obtaining loans in many countries where migration begins encourages the development of informal lending networks charging interest at usurious rates. Informal lending networks grow up alongside the smuggling networks, supplying the money that the migrants pay the smugglers. They create a vicious circle of debt, leaving houses, land and goods mortgaged, and the only hope of paying off what is owed is with the earnings remitted, for the most part, by migrants working illegally abroad.

35. The Special Rapporteur notes that a good many countries have not come up with an effective strategy to combat the spread of illegal migrant smuggling networks or made trafficking a punishable offence under their law. National legislation on the subject is still embryonic, and most States are not parties to the United Nations Convention against

Transnational Organized Crime and the two supplementary protocols on trafficking and smuggling. The Special Rapporteur is also concerned at reports that State employees are suspected of being in league with the smuggling networks, and reports of the prevailing corruption in this area.

36. The Special Rapporteur considers it highly important to make an effort to block illegal migration, which not only exposes migrants to abuse during their voyage but also, because of their illegal status, affects their rights in the country of destination. Illegal migrants are more likely to face unfair exploitation, slave labour, working conditions that endanger their health, safety and mental well-being, and other violations of their rights; they find it hard to report such abuses for fear of being deported. The debt bondage of their families at home forces many migrants in the receiving countries to accept any kind of work so that they can pay off the debts. Women trapped into employment as domestic servants or forced into degrading sex work are especially vulnerable.

37. On the subject of preventing smuggling, the Special Rapporteur does not think it is possible to evade a thoroughgoing debate on how to regulate migratory flows where there is a real demand for immigrants. Effective policies are needed to prevent illegal migration, starting in the countries of origin, by providing nationals with proper documents, mounting information campaigns and enabling people to put down roots in their home countries. The Special Rapporteur does not believe that economic aid for development can by itself solve the problem of rootlessness: the countries of origin must also undertake to promote the political, social and cultural establishment and integration of their nationals. She also considers that fighting corruption is another important dimension of efforts to combat the smuggling of migrants in all countries.

Trafficking in persons, especially women and children

38. The Special Rapporteur observes that few countries have managed to combat trafficking in persons successfully. She is concerned at countless reports on the traffic in female domestic servants who are treated as slaves by their employers and left without protection against sexual, physical and psychological abuse within the home. She is alarmed at the situation of the many women enslaved in the sex industry in many developed countries, who are also penalized if they are found to be there illegally despite their subjugation by international mafias. She is particularly worried to note that a large number of these women are under age.

39. Women and young people, and children in largely undeveloped countries, are particularly likely to be preyed upon by the trafficking networks. In Ecuador the Special Rapporteur was told of the existence of a network trafficking in under-age Ecuadorian girls, indigenous girls in particular, supposedly for the sex industry in Japan. She also notes with concern the alleged existence of networks trafficking eastern European women into western countries.

40. The Special Rapporteur is perturbed at the high degree of impunity associated with this phenomenon of extreme abuse on a global scale.

The connection between asylum and migration

41. The Special Rapporteur takes a positive view of the debate between the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) on the connection between asylum and migration that began during the Global Consultations staged in 2001 by UNHCR. She points out that respect for the institution of asylum must be ensured, together with respect for the human rights of migrants, asylum-seekers and refugees, during efforts to control migration.

42. The Special Rapporteur sees two key topics emerging from this debate. One is the need to ensure that migration management and control policies protect human rights, to avoid the various kinds of abuse to which migrants, asylum-seekers and refugees are subjected. The other is the ambiguity inherent in deciding who is a migrant and who a refugee. The Special Rapporteur finds it increasingly difficult to distinguish between the two.

43. Many migrants resort to the asylum system for want of regular channels for migration; facing a hardening of policy on the granting of asylum, paradoxically, increasing numbers of migrants are resorting to illegal migration to escape violence and persecution. Fear of being denied refugee status, of being put in a refugee camp, of the unsafe conditions in those camps and of being seen and identified as refugees are all factors which the Special Rapporteur sees as pushing refugees to go underground.

44. As a member of the expert panel on refugees and migrants set up by the Office of the United Nations High Commissioner for Human Rights and UNHCR for Human Rights Day, the Special Rapporteur emphasized that migrants and refugees should not have to compete for protection. The debate over asylum and migration should encourage stricter regard for the 1951 Convention and for States' commitments on human rights in all matters relating to migration control and the protection of migrants' rights. The Special Rapporteur is uneasy about linking protection to asylum and refugee status exclusively. She considers it important to recall the resolutions constituting her mandate in which States indicate that they are encouraged by the increasing interest among the international community in the full and effective protection of the human rights of all migrants.

The situation since 11 September

45. In a statement issued on 25 September 2001, the Special Rapporteur forcefully condemned the attacks mounted against the United States of America on 11 September. She appealed for people not to associate terrorism with migration, saying that Governments had a responsibility to combat terrorism in all its forms, while it was important not to damage the system of rights characteristic of democratic societies which terrorism sought to destroy. She appealed for migrants not to be viewed as a category whose rights could be violated simply because they were not nationals. In her public statements since 11 September the Special Rapporteur has reminded States of their duty to improve their security and intelligence systems so as to protect all those living within their territory, migrants included. At the eighty-second session of the IOM Council, she told member States that "the alternative to unregulated migration which can damage a State's security and does in fact harm migrants' rights is to control migratory flows, especially when there is a real demand for migration".

46. The Special Rapporteur considers that policies discriminating against migrants because of their national origin cannot be allowed to take root, and States must honour their international undertakings on human rights, particularly as regards the non-derogable rights of every individual.

47. The Special Rapporteur added her name to those of 16 other independent United Nations experts beneath a statement released on Human Rights Day voicing deep concern over the adoption or contemplation of anti-terrorist and national security legislation and other measures that might infringe upon the enjoyment of human rights. The statement also deplored human rights violations and measures particularly targeting groups such as migrants whose effect was to limit the protection of their rights.

48. In her statement of 25 September, the Special Rapporteur welcomed efforts by Governments to combat racist and xenophobic acts perpetrated against migrants in different parts of the world in reaction to the attacks of 11 September.

The situation of migrant women

49. Accounts she has received during the period covered by this report suggest to the Special Rapporteur that many of the young women emigrating to more developed countries settle there whether they arrived legally or not, because they do not face the same patterns of discrimination and oppression by family members as at home. The women report that they can decide things for themselves and are free to do what they want with their lives, despite the hardships they encounter as migrants.

50. Many women also report, however, that despite their greater personal freedom they still face some discriminatory practices, such as being paid lower wages because they are migrants and women, or not having access to basic health services for women because of their illegal status. This is a matter of particular concern for migrant women who are pregnant and cannot always obtain appropriate antenatal care.

51. During the period covered by this report the Special Rapporteur has continued to pay close attention to the kinds of abuse to which migrant women in domestic service are subject. She notes that the protection afforded to domestic workers' rights is extremely flimsy, and that many instances of exploitation at work, physical, mental and sexual abuse are reported, in particular by women emigrating from Asia, a large proportion of whom migrate to countries in the Persian Gulf region.

52. In May 2001 the Special Rapporteur attended an Asian regional forum on female migrant domestic workers organized by a coalition of Asian non-governmental organizations. There she heard accounts reflecting the lack of access to protective mechanisms in the face of extreme abuse, including cases of slavery. Victims told her that their consulates had done too little to protect them and that, besides having suffered violations of their human and labour rights, they had been penalized and deported for trying to report their employers. The Special Rapporteur considers it very important to institute a detailed discussion between countries of origin and receiving countries, including migrants' and civil society organizations, on the subject of protection for female migrant domestic workers.

Unaccompanied children

53. The Special Rapporteur has received reports of various cases in which the victims were unaccompanied minors. She is concerned at the growing numbers of minors reported to be using the international migrant smuggling networks and going underground in their countries of destination. She is particularly uneasy over reported cases of minors being expelled between Spain and Morocco without any legal representation. She has also received reports of children dying on the high seas, in particular one incident in which 356 people, many children among them, were reported to have perished off the Indonesian coast. Lastly, she sent an urgent appeal in connection with the alleged detention in the United States of America of an unaccompanied Nigerian girl. The cases referred to above, and the replies the Special Rapporteur received from the Governments concerned, are described in detail in the separate section on communications sent.

V. ACTIVITIES PURSUED AND COMMUNICATIONS SENT BY THE SPECIAL RAPPORTEUR

A. Urgent appeals

54. During the period under review, the Special Rapporteur sent the following urgent appeals to the Governments of the countries referred to below. The cases in which the Governments responded to the urgent appeals are also discussed.

Saudi Arabia

55. On 27 February 2001, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, concerning the case of Siti Zaenab binti Duhri Rupa, an Indonesian migrant, who had reportedly been sentenced to death for the murder of her employer. It was reported that Siti Zaenab binti Duhri Rupa had been tried without any legal assistance and that neither her embassy nor the family's lawyer had been able to visit her at the detention centre.

56. By a letter dated 20 November 2001 the Government of Saudi Arabia informed the Special Rapporteur that, on 11 September 2000, Siti Zaenab binti Duhri Rupa had been sentenced to death, after confessing during the trial to having committed the offence of which she was accused. The Government explained that the sentence had not yet been carried out pending attainment of the age of majority by the child of the murdered woman, in case he decided to opt to receive financial compensation, to pardon the offender or to demand enforcement of the sentence, in accordance with Saudi law.

Bahrain

57. On 21 December 2000, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in connection with the case of Ms. Yeshiworq Desta Zewdie,

an Ethiopian migrant who was reported to have a legal residence in Bahrain. Ms. Yeshiworq Desta Zewdie was said to have been sentenced to death for the murder of her employer. According to information received, she had been enslaved by her employer, had been subjected to physical and psychological abuse and had received no wages for a period of two years. It was held that the alleged abuse suffered by the migrant had not been taken into account during the trial which concluded with her being sentenced to death.

58. By a letter dated 22 January 2001, the Government of Bahrain informed the Special Rapporteur that Yeshiworq Desta Zewdie had been convicted of intentional and premeditated murder in a trial at which a variety of evidence was produced against her, including a letter in which she was said to have set out her intention of murdering her employer. The Government of Bahrain also informed the Special Rapporteur that Yeshiworq Desta Zewdie's lawyer had lodged an appeal against the court's decision on 25 December 2000. It enumerated the remedies still available to her lawyer and noted that all executions must ultimately be approved by the Amir of Bahrain.

Spain

59. On 1 November 2001, the Special Rapporteur sent an urgent appeal to the Government of Spain concerning information received on two infants, aged 13 and 18 months, whose presumed mothers, two Nigerian women, had allegedly been detained and deported because of their illegal status, while the infants were reported to have remained in Spain. It was said that the lawyers for the two women had informed the examining magistrate of the existence of their alleged children and that they had been unable to appeal against the final expulsion order because it had been served on them on the very day of the expulsion. It was also reported that the infants had been kept by persons known to the presumed mothers.

United States of America

60. On 6 June 2001, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the case of Gerardo Valdez Maltos, a Mexican national who had been sentenced to death and whose execution was scheduled for 19 June 2001. It was reported that Gerardo Valdez was suffering from severe mental problems and had not been informed of his right to communicate with his consulate.

61. On 20 September 2001 the Government of the United States of America stated that the Oklahoma Court of Appeals had granted an indefinite stay of execution.

62. On 4 July 2001, the Special Rapporteur sent a joint urgent appeal together with the Working Group on Arbitrary Detention concerning the reported detention of an eight-year-old minor of Nigerian origin, who had arrived unaccompanied at John F. Kennedy international airport and presented false documents. She was said to have been held in the custody of the Immigration and Naturalization Service (INS) for over a year.

63. By a letter dated 23 August 2001, the Government of the United States of America provided the Special Rapporteur with information relating to this case. According to information received, the minor had remained in the custody of the INS until the United States Government was able to make the necessary inquiries to determine her identity and immigration status and the whereabouts of her relatives. While the INS was investigating the whereabouts of her relatives, the minor was said to have been housed in the Boystown shelter facility. The INS was reported to have made repeated efforts to discern the wishes of her parents as to her case, but had received conflicting signals as to whether she should return to Nigeria or seek asylum in the United States. Finally, the United States Government stated that on 8 August 2001, the INS had decided that the minor should be delivered into the custody and care of a cousin. Her release was reported to have been approved after the minor's father had presented information in the United States Consulate General in Lagos confirming his status.

Indonesia

64. On 27 February 2001, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning reports received on the situation in the province of Central Kalimantan, and in particular alleged incidents of violence committed by members of the Dayak indigenous group against migrants from the islands of Java and Madura. It had been alleged in the reports received that over 270 migrants had been killed, including women and children, and that many houses had been destroyed. It had also been reported that soldiers of the Indonesian army had been present during the events, but had not intervened or halted the violence.

65. By a letter dated 12 March 2001, the Government of Indonesia informed the Special Rapporteur that in the course of the incidents, 365 persons were reported to have lost their lives and thousands were said to have been forced to flee the province in question. The Government said it had done its utmost to stem the violence, and, in particular, had deployed six battalions of soldiers to back up the police, arrested three local officials suspected of masterminding the attacks, confiscated weapons and detained over 80 persons on charges of vandalism and another 38 on suspicion of murder. The Government of Indonesia also reported that the security apparatus had provided protection to persons fleeing the violence. The Government also informed the Special Rapporteur that on 1 March 2001 Vice-President Megawati Sukarnoputri had visited the province to secure an end to the violence and that on 8 March President Abdurrahman Wahid had visited the town of Sampit, where he was said to have negotiated a solution with Dayak leaders. The Government reports that on 9 March President Wahid had flown to Madura to meet the victims who had fled the province, and assured them that he would do his utmost to guarantee their safe return, as well as the return of their property. The Indonesian Government assured the Special Rapporteur that the situation in Sampit had returned to normal.

Lebanon

66. In her report to the Commission at its fifty-seventh session, the Special Rapporteur reported the alleged detention incommunicado of Trabun Ibrahim Laku, Gilbert Kwagy, Adam Abu Bakr Adam and Saah Muhammad Abdallah, Sudanese citizens seeking asylum in

Lebanon, on charges of illegal entry. In reply to the joint urgent appeal sent together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, and the Special Rapporteur on torture, Sir Nigel S. Rodley, the Government of Lebanon, in a letter dated 7 May 2001, set out the details of the situation of the Sudanese asylum-seekers who had allegedly entered the country illegally and who were said to have been returned to their countries of origin, including Trapol Ibraham Lako. In a letter dated 26 November 2001, it also reported that there is no law in Lebanon relating to guarantees applicable to illegal migrants. The Government stated that, under the Law of 10 July 1963 concerning the entry, residence and exit of aliens, all aliens must enter the country through a public security checkpoint, bearing proper documents, or face a fine and deportation. The Government of Lebanon reiterated that the allegations of ill-treatment and torture of Sudanese nationals referred to in the urgent appeal were groundless.

Islamic Republic of Iran

67. On 27 June 2001, the Special Rapporteur sent a joint appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, and the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran, Mr. Maurice Copithorne. The rapporteurs had received information indicating that a 14-year-old minor of Pakistani nationality had been sentenced to death by an Iranian court. They had also received information concerning the alleged execution of an 18-year-old boy, Mehrdad Yusefi, on 29 May 2001, reportedly for an offence he had committed when he was 16 years old.

Tonga

68. On 30 November 2001, the Special Rapporteur sent an urgent appeal to the Government of Tonga in relation to the situation of some 600 Chinese migrants who had allegedly been subjected to racist and violent acts and whose property was said to have been destroyed by Tongan nationals. It was also reported that Tonga's Immigration Office had requested that the Chinese families should leave Tonga for their own safety and protection.

69. By a letter dated 4 January 2002, the Government of Tonga replied to the Special Rapporteur that the country's migration policies applied irrespective of race, colour, descent or ethnic origin, adding that such policies applied equally to Chinese and to other nationalities.

Turkey

70. On 27 July 2001, the Special Rapporteur sent an urgent appeal to the Government of Turkey, together with the Special Rapporteur on torture and the Working Group on Arbitrary Detention, after receiving information on the situation reportedly experienced by 7 persons of African origin who were said to have been detained in a police round-up together with 200 other immigrants. The seven persons were reported to have been held for a week in the police headquarters in Istanbul, to have remained there in poor conditions and to have been subjected to beatings and rapes. It is alleged that while in detention they were made to sign documents written in Turkish acknowledging that they had entered Turkey from Greece. In addition, police were said to have refused access to a lawyer who tried to visit the detainees to obtain

information. It was also reported that the remainder of the approximately 200 persons detained in the police round-up were taken to the border with Greece, where the Greek police allegedly forced them to return to Turkey, and that their whereabouts and situation are unknown.

71. In a letter dated 6 August 2001, the Government of Turkey provided the Special Rapporteur with information on the above-mentioned case. The Government of Turkey stated that on 7 and 8 July a group of foreigners from diverse countries in Asia and Africa had been taken into custody. It explained that during the period of custody no form of racist or discriminatory treatment against the group of African origin had occurred. The Government of Turkey stated that those in possession of valid passports or visas had been released immediately, as well as those who had previously lodged asylum applications, and that only those who had no passports or visas had been retained in custody. Those persons had voluntarily filled in the forms presented to them. The Government of Turkey explained that during the period in which they had remained in Turkish police custody, none of them had been subjected to ill-treatment, though some of the detainees had refused the medical help and food which were offered. None of them had sought asylum in Turkey and almost all of them had acknowledged that they were in Turkey illegally and were waiting for an opportunity to enter Europe. Lastly, the Government of Turkey stated that all those who were in Turkey illegally had been deported.

B. Communications through normal channels

Spain

72. On 15 November 2001, the Special Rapporteur sent a communication to the Government of Spain concerning the situation of two children of Moroccan nationality who were reported to have been expelled from the autonomous city of Melilla to Morocco and handed over to the Moroccan police without their families or the social services being present. It was alleged that at least one of the minors was in the care of the city. Information was also received concerning 35 cases of expulsion of Moroccan children in very similar circumstances.

73. In relation to the situation in El Ejido, referred to in the Special Rapporteur's report to the Commission at its fifty-seventh session, the Government of Spain sent a letter dated 6 February 2001 setting out details of the follow-up to the agreements reached following the events of February 2000, in which a community of migrants had suffered violent xenophobic attacks and severe damage to their property and houses. The report presented to the Special Rapporteur indicated the steps taken to rehouse the affected migrants, pay compensation for their losses and begin regularizing their situation after their identity papers were lost or destroyed during the attacks. The Government also declared its intention to embark on a housing programme and described intercultural and social integration programmes in Almería. Concerning investigation of the events, the Government stated that the judicial authorities had been made aware of the events.

Indonesia

74. On 29 October 2001, the Special Rapporteur sent the Government of Indonesia a joint communication together with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the case of a boat which had sunk off the Indonesian coast, causing the

deaths of 356 migrants, including women and children. It had been reported that the boat had sailed from the island of Java and that, several hours after the sinking, 44 persons had been rescued. These had testified that, when they realized that the boat was becoming overloaded, they were unwilling to continue boarding, but were forced to do so at gunpoint by at least one Indonesian policeman and other men accompanying him.

75. By a letter dated 12 November 2001, the Government of Indonesia informed the Special Rapporteur that, according to information it had gathered, over 350 people of Iraqi, Iranian, Afghan, Palestinian and Algerian nationality had died in the tragic incident and that, on the strength of the survivors' testimonies, the police had arrested an Egyptian citizen who was suspected of involvement in smuggling the migrants. It was also reported that the Egyptian citizen had been aided and abetted by a local policeman and three Iraqis. According to the Government of Indonesia, the police officer in question had been detained and was helping with the ongoing investigation. The Government informed the Special Rapporteur that, according to a police reconstruction of the events, the migrants had been transported in four buses from Bogor, West Java, to the port of Bakaheuni in Merak, to Banten and then to Lampung, where they had stayed in a hotel for two days before boarding the vessel. The convoy was said to have been escorted and rigorously guarded by the police officer who had been detained and several men wearing military-style fatigues. The Government of Indonesia stated that in a bid to curb the arrival of new asylum-seekers in the country, it had limited the issue of entry permits to citizens of certain countries. The Government considered that it would be possible to counter the movement of illegal migrants in the country by setting up proper quarantine facilities, with the support of interested neighbouring countries, to discourage the use of Indonesian territory for purposes of transit.

Morocco

76. On 9 February 2001 the Special Rapporteur contacted the Government of Morocco in connection with allegations of the death of 10 migrants and the disappearance of 20 others who had sailed from the Moroccan coast in a boat which was wrecked off the coast of Spain. According to information received by the Special Rapporteur, 10 corpses were found 20 kilometres from Tarifa, in Andalusia, including the corpse of a child of 10. Estimates reported to the Special Rapporteur indicate that some 500 migrants die each year while attempting to reach Spain by sea, most of them being victims of migrant-smuggling.

C. Visits

77. At the invitation of the Government of Ecuador, the Special Rapporteur visited Ecuador between 5 and 16 November 2001. The report of her visit has been issued as an addendum to the present report (E/CN.4/2002/94/Add.1).

78. At the invitation of the Government of Mexico and the Government of the United States of America, the Special Rapporteur planned to make a joint visit to the border between the two countries, and a visit to Mexico and its southern border, between 18 September and 9 October 2001. However, as a result of the tragic events which occurred in the United States of America on 11 September 2001, the visit was postponed by agreement between the Governments of the two countries and the Special Rapporteur. The Special Rapporteur

subsequently proposed to the two Governments that the visit should be rescheduled for January 2002. In response to her suggestion, the United States Government requested her not to make the visit before the first fortnight in March, to allow time for proper preparations. The Special Rapporteur hopes that by the time this report is issued the visit to the two countries will have taken place.

79. By a letter dated 8 June 2001, the Government of the Philippines agreed to the Special Rapporteur's proposal that she should visit the Philippines within the context of her mandate. After an exchange of correspondence, the visit was scheduled between 7 and 16 February 2002. However, as a result of the adjustments made in the Special Rapporteur's timetable following the events of 11 September 2001, it was suggested to the Government of the Philippines that the visit should be rescheduled in May 2002.

D. Participation in the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Conference itself

80. In recent decades there has been an increase in displays of discrimination, racism, xenophobia and inhuman and degrading treatment against migrants in various parts of the world. For this reason, in resolution 1999/44, which sets out the mandate of the Special Rapporteur on the human rights of migrants, the Commission invited the Special Rapporteur to participate actively in the work of the preparatory committees for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance. The Special Rapporteur attended most sessions of the Preparatory Committee, the regional meetings and the seminars of experts organized in Asia, Africa, Latin America and Eastern Europe. On each occasion she reviewed the progress made and put forward recommendations relating to the migration issues which should be included in the Durban agenda and the manner in which they should be addressed from the viewpoint of the human rights of migrants.

81. During the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which was held from 31 August to 7 September 2001 in Durban, South Africa, the Special Rapporteur participated in the Seminar on Cooperation for the Better Protection of the Rights of Minorities, a round table on gender and migration and forums organized by non-governmental organizations. She was also a special guest at a forum on "Voices of Victims", where she heard testimony from victims of discrimination, xenophobia and racism.

82. Thanks to her constant presence at pre-Conference activities and meetings and during the World Conference itself, the Special Rapporteur helped to ensure that 45 paragraphs which refer to migration issues were approved in the Declaration and Programme of Action. Noteworthy among the issues covered in the two documents are: the situation of vulnerability in which migrant women and children find themselves; family reunification as a means of facilitating the integration of migrants in the host society; migrant workers, and among them domestic employees in particular; the voluntary return of migrants to their countries of origin in dignity; efforts to combat transnational organized crime networks smuggling migrants and trafficking in

persons, leading to the most degrading types of abuse and violence against migrants, and even in many cases to death; and the growing phenomenon of refugees, internally displaced persons and asylum-seekers.

83. In her statement to the plenary session of the World Conference, the Special Rapporteur acknowledged the efforts made by the World Conference in the struggle to eradicate racism, xenophobia and discrimination against the migrant population throughout the world. Notable among the recommendations made by the Special Rapporteur was that the issue of migration should be addressed jointly in the countries of origin, transit and destination, through the implementation of migration control policies and actions which, without neglecting national security or infringing on the sovereignty of each State in respect of the entry of individuals onto its territory, would avoid violating fundamental human rights, permitting or fostering discrimination or detracting from the dignity of migrants. This legislation should both prevent and combat the smuggling of migrants and trafficking in persons. At the same time, the Special Rapporteur highlighted the importance of analysing the issue of migration not only from a legal or economic viewpoint, but one embracing the human, psychological and social dimensions which make up the context within which migration takes place, and the consequences this has for the migrant, for his or her family and for the community in general.

84. The Special Rapporteur urged States to follow up and pursue the issues endorsed during the World Conference by including them in national and regional action programmes. The paragraphs adopted in the Durban Declaration and Programme of Action should form the backbone of their efforts to address the phenomenon of racism, racial discrimination, xenophobia and related intolerance. The Special Rapporteur highlighted the key importance of strengthening joint actions by Governments, international organizations and non-governmental organizations to secure effective protection and promotion of the human rights of migrants.

E. Participation in conferences and meetings

85. The Special Rapporteur participated in a variety of conferences and meetings in 2001, including the annual meeting of special rapporteurs (18-22 June), the Madrid conference on religious intolerance (23-25 November), the eighty-second session of the Council of IOM (27-29 November) and the panel on refugees and migrants organized by UNHCR and the Office of the United Nations High Commissioner for Human Rights on Human Rights Day (10 December). She was also invited to attend the European Union ministerial meeting on migration on 16 and 17 October. She took note of the efforts being made within the European Union to harmonize migration policies, the huge task involved in standardizing approaches to migration and the well-known concern of the members of the Union to combat smuggling of migrants and illegal migration. She encourages the European Union and civil society organizations to engage in a serious and thorough dialogue and exchange of experience on migration and the protection of the human rights of migrants during the process of harmonizing European policies. Her experience of other regional processes has demonstrated to her that dialogue with civil society constitutes a sound practice which offers an opportunity to exchange not only views and perspectives on the phenomenon of migration but also responsibilities, in a search for consensus among all the sectors involved.

86. In May, the Special Rapporteur visited Chiang Mai, Thailand, for a regional seminar of Asian non-governmental organizations on migrant domestic workers. This was a preparatory meeting for the regional forum being promoted by a coalition of non-governmental organizations in the region in 2002. The Special Rapporteur attaches great importance to this forum, in which States, organizations and migrants will exchange experience in this area with a view to enhancing the quality of life and effective protection of domestic employees. She welcomes the proposal made by Asian non-governmental organizations that annual regional consultations should be organized with her to examine issues of concern to them in connection with the human rights of migrants.

87. During the period under review, the Special Rapporteur also followed with interest the process initiated at The Hague by the Netherlands section of the Society for International Development on asylum and migration. This process, involving many individuals, experts, officials and academics working in the area of migration and asylum throughout the world, is aimed at the drawing up of a sort of charter of principles relating to migration and asylum throughout the world.

F. Cooperation with other special rapporteurs, treaty bodies, specialized agencies, intergovernmental organizations and other competent organizations in the United Nations system

88. During the period under review, the Special Rapporteur sent communications through normal channels and/or urgent appeals jointly with a variety of special rapporteurs, in particular the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, the Special Rapporteur on torture, Sir Nigel S. Rodley, the Working Group on Arbitrary Detention and the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran, Mr. Maurice Copithorne. She also held a meeting to exchange views with the Working Group on Arbitrary Detention in December 2001. The Special Rapporteur had fruitful meetings on the issues falling under her mandate with representatives of IOM and the International Labour Organization (ILO). She also had contacts with UNHCR in connection with the debate on the connection between asylum and migration, and with the World Health Organization (WHO) on the topic of interpersonal violence and migration. She appreciated the meeting between special rapporteurs and members of the treaty monitoring bodies, and hopes to be able to set up machinery for cooperating with them.

VI. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

A. Concluding observations

89. The Special Rapporteur hopes that this report will help to enhance the debate on the need to guarantee full and effective protection of the human rights of migrants. She emphasizes the great progress that has been made during the period under review in the development of strategies for the protection of the rights of migrants, and in particular the agreements reached

during the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which were published on 2 January 2001 and will be brought to the attention of the General Assembly, especially where they relate to migration and human rights.

90. The Special Rapporteur has also noted with interest the processes initiated in various regions of the world which are working towards coordinated action in the field of migration, and in particular stresses the importance of participation by civil society organizations in these processes, as well as participation by migrants themselves.

91. The Special Rapporteur has noted the growing commitment by States to integrate the protection of the human rights of migrants into their migration control policies and to ensure that such issues as the special situation of women migrants, efforts to prevent and combat smuggling and the return of migrants in dignity and security are incorporated in their dialogues in this area.

92. In this report the Special Rapporteur has underlined the seriousness of the situation which migrants must face, particularly women migrants and minors, in the context of smuggling. She has raised the serious problem of impunity enjoyed by smuggling networks and the penalization of the migrants who are their victims. The Special Rapporteur has emphasized the situation in the countries of origin, and the need to enable people to establish themselves and help the members of migrants' families who remain behind. She has also pointed to the challenge of managing migratory flows in an orderly fashion where demand for immigrants exists in parallel with action to combat transnational networks of migrant-smugglers.

93. In this report the Special Rapporteur has stressed the need to incorporate the issue of protection of human rights fully into policies for migration management and control. She has also emphasized the need for States to respect their international commitments in the field of human rights in a non-discriminatory manner, even when states of emergency have been declared.

94. The Special Rapporteur takes this opportunity to thank Governments, non-governmental organizations, international agencies, the United Nations, universities and migrants for the constant support she has received, and in particular for the exchanges she has had with them concerning the situation of migrants and the invitations to major meetings and forums on the matter, which have made a crucial contribution to the discharge of her mandate. The Special Rapporteur also thanks the Office of the United Nations High Commissioner for Human Rights for the support provided to her in pursuing her mandate during the period under review.

B. Recommendations

95. On the basis of the resolutions which established the Special Rapporteur's mandate, the following recommendations are submitted with the aim of promoting greater protection of the human rights of migrants.

96. The Special Rapporteur considers that the 45 paragraphs on the situation of migrants adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and forming part of the Conference document published on 2 January 2002

that will shortly be put before the General Assembly constitute a fundamental working agenda for addressing violations of the human rights of migrants arising from discrimination, racism, xenophobia and related intolerance.

97. The Special Rapporteur recommends that States should give priority to setting up their national programmes arising from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, especially practical steps to protect the rights of migrant women and children, particularly against abuses committed in the context of domestic employment and smuggling and trafficking. Priority should also be given to the provisions relating to family reunification, which promotes the integration of migrants in the host countries.

98. The Special Rapporteur also considers it most important to follow up the recommendations contained in the document of the World Conference that relate to migration control policies and the protection of human rights, in particular the sections calling on States to ensure that their migration policies are consistent with their international human rights obligations and free of racism.

99. The Special Rapporteur considers that it is of fundamental importance that non-governmental organizations should continue their efforts to monitor and protect the human rights of migrants, as mentioned in the final document of the World Conference, and urges them to play an active part in the application of the provisions agreed in Durban.

100. The Special Rapporteur considers that it is of fundamental importance to follow up the provisions of the World Conference document which refer to promotion of participation by States in regional dialogue and the negotiation of bilateral and regional agreements which, in consultation with civil society, cover management and control issues and the regulation and protection of human rights.

101. The Special Rapporteur urges States to review their domestic legislation to bring it into line with their international obligations relating to the protection of human rights, especially in the matter of non-discrimination.

102. The Special Rapporteur urges States to ratify the December 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which requires only three more ratifications to enter into force. She also recommends that States should consider ratifying the United Nations Convention against Transnational Organized Crime and in particular the two protocols to it - the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Air and Sea - which constitute major instruments for combating the impunity of these transnational criminal networks and the abuses they commit against their victims.

103. The Special Rapporteur strongly recommends to States that they should continue to address the issue of the human rights of migrants using an all-round approach which takes into account the situation of the families which remain behind in the home countries, especially minors, the violations committed during migrants' journeys, particularly in the States through which they pass, and the phenomenon of smuggling, as referred to in Commission on Human Rights resolution 2001/56 on protection of migrants and their families.

104. The Special Rapporteur urges States to respect their international human rights commitments, particularly as regards respect for the non-derogable rights of every individual, and encourages them to continue promoting measures of integration for migrants. She points out that the alternative to uncontrolled migration, which can jeopardize State security and actually undermine the rights of migrants, is the orderly management of migratory flows, especially when there is real demand for migrants.

105. Regarding efforts to combat migrant-smuggling and trafficking, the Special Rapporteur urges States to develop their legislation and take concerted action to effectively punish the crimes committed by these networks, bearing in mind the aggravating circumstances when the legislation is adopted, and to refrain from penalizing the victims of smuggling in any way.

106. The Special Rapporteur recommends that States should give priority to the orderly management of migratory flows where there is real demand for immigrants, and that at the same time they should develop strategies for combating illegal migration in bilateral and regional dialogues as well as their domestic policies. She encourages States to give the protection of migrants who are victims of smuggling a prominent place in all their strategies to combat international smuggling.

107. The Special Rapporteur urges States to incorporate protection of the human rights of migrants into all their migration control policies, paying particular attention to the situation of illegal migrants in transit countries.

108. The Special Rapporteur recommends to the States in which migration originates that they should provide effective consular protection when their nationals are detained or their rights are infringed. She also recommends to all States that they should remedy situations involving the indefinite detention of migrants, whose rights may be infringed, especially when obstacles exist to their deportation.

109. The Special Rapporteur strongly recommends to States and organizations that they should give priority to addressing the situation of migrant domestic workers and draw up strategies to protect this particularly vulnerable group of migrants.

110. The Special Rapporteur recommends strengthening of the capacities of civil society and migrants' organizations, which are carrying out crucial work in helping and watching over migrants.

111. The Special Rapporteur also recommends to States that they should work together with such organizations at the national, regional and international levels to coordinate their actions in the field of protection. She also recommends the organizations to consolidate their networks at the regional and international levels to enable them to assist and effectively monitor the situation of migrants and give priority to the problems of the victims of smuggling, particularly children and women.

Notes

[1] To mention but a few, the Conference decided to urge States to:

> Review and revise, where necessary, their immigration laws, policies and practices so that they are free of racial discrimination and compatible with States' obligations under international human rights instruments (Programme of Action, para. 30 (b));
>
> Implement specific measures involving the host community and migrants in order to encourage respect for cultural diversity, to promote the fair treatment of migrants and to develop programmes, where appropriate, that facilitate their integration into social, cultural, political and economic life (Programme of Action, para. 30 (c));
>
> Urge States to take concrete measures that would eliminate racism, racial discrimination, xenophobia and related intolerance in the workplace against all workers, including migrants, and ensure the full equality of all before the law, including labour law; and further to urge States to eliminate barriers, where appropriate, to: participating in vocational training, collective bargaining, employment, contracts and trade union activity; accessing judicial and administrative tribunals dealing with grievances; seeking employment in different parts of their country of residence; and working in safe and healthy conditions (Programme of Action, para. 29);
>
> Ensure that the police and immigration authorities treat migrants in a dignified and non-discriminatory manner, in accordance with international standards, through, inter alia, organizing specialized training courses for administrators, police officers, immigration officials and other interested groups (Programme of Action, para. 30 (e)).

[2] "We reaffirm the sovereign right of each State to formulate and apply its own legal framework and policies for migration, and further affirm that these policies should be consistent with applicable human rights instruments, norms and standards, and designed to ensure that they are free of racism, racial discrimination, xenophobia and related intolerance" (Declaration, para. 47).

[3] Programme of Action, para. 26.